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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Trinity)

LEON CODY,

Plaintiff and Appellant,

v.

NATIONSTAR MORTGAGE LLC,

Defendant and Respondent.

C084603

(Super. Ct. No. 13CV011)

In a prior appeal, Leon Cody and Darlene Cody attempted to challenge the granting of a motion for summary judgment. We dismissed the appeal as having been taken from a nonappealable order. (*Cody v. Bank of America, N.A.* (July 17, 2017, C081544) [nonpub. opn.].) In this appeal, the Codys have timely appealed from an appealable judgment of dismissal in favor of respondent Nationstar Mortgage LLC (Nationstar). However, nearly all of the Codys' contentions are forfeited for lack of timely objection in the trial court, inadequate record on appeal, or deficient briefing.

The Codys argue (1) the presiding judge violated Code of Civil Procedure section 170.8 by failing to contact the Judicial Council after their peremptory challenge was granted under Code of Civil Procedure section 170.6, (2) the trial court abused its discretion by refusing to grant leave to amend the Codys' operative complaint, (3) the Codys alleged a viable cause of action under Civil Code 2923.7 based on Nationstar's failure to provide them with a single point of contact, (4) the Codys had viable causes of action for trespass and conversion, and (5) the trial court abused its discretion in imposing discovery sanctions.

We conclude the Codys have not preserved their challenge to Judge Murray on grounds of bias for lack of timely objection. The Codys have forfeited their argument regarding denial of leave to amend in the absence of an adequate record or developed argument on the issue. The Codys' operative complaint does not allege that lack of a single point of contact materially affected them, which is a prerequisite for a cause of action under Civil Code section 2923.7. The record on this issue is also inadequate to allow further review. Regarding the causes of action for trespass and conversion, these causes of action are not in the operative complaint and the Codys have not demonstrated error in the trial court's refusal to allow them to amend. Finally, the discovery sanctions issue is forfeited for want of any legal authority in support. Accordingly, we affirm.

BACKGROUND

In light of appellants' forfeiture of almost all of their issues on appeal, we set forth only a brief recitation of the background of this case.

The Codys filed their third amended complaint in July 2014. The third amended complaint is the operative complaint. The operative complaint alleges two causes of action for (1) "violation of the California Homeowner Bill of Rights," and (2) cancellation of instruments. Defendants demurred, and the trial court sustained the

demurrer as to the second cause of action. Only the cause of action asserted under the Homeowner Bill of Rights remained.

In April 2016, the trial court allowed the Codys “to file their ‘proposed Fourth Amended Complaint’ ” pending defendants’ chance to respond and the trial court’s opportunity to read the proposed pleading. The trial court, however, denied leave to amend upon concluding it attempted to revive abandoned claims.

Nationstar moved for summary judgment on the remaining single cause of action. The Codys opposed the motion. After a hearing, the trial court granted summary judgment in favor of Nationstar. The trial court found the evidence showed “the allegation that [Nationstar] failed to respond” to the Codys’ application after January 1, 2013 “is simply not true.” The trial court further found no foreclosure had occurred. The trial court dismissed the claim concerning the lack of a single point of contact on grounds the Codys had not alleged the materiality of the fact regarding single point of contact or even that they had requested a single point of contact.

From the judgment of dismissal, the Codys timely filed a notice of appeal.

DISCUSSION

I

Code of Civil Procedure section 170.8

The Codys assert Judge Dennis Murray was biased against them. They also argue Judge Murray was improperly assigned to their case because the presiding judge of Trinity County Superior Court did not follow the requirements of Code of Civil Procedure section 170.8. However, the record does not show and the Codys do not assert they ever objected to Judge Murray’s assignment.

As a general rule, “ ‘[i]n order to preserve an issue for appeal, a party ordinarily must raise the objection in the trial court.’ (*In re S.C.* (2006) 138 Cal.App.4th 396, 406.) ‘The party also must cite to the record showing exactly where the objection was made.’

(*Ibid.*) As the California Supreme Court [has] reaffirmed, ‘a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court.’ (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) ‘The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.’ (*Ibid.*)” (*K.C. Multimedia, Inc. v. Bank of America Technology & Operations, Inc.* (2009) 171 Cal.App.4th 939, 948–949.)

In *People v. Lewis and Oliver* (2006) 39 Cal.4th 970 (*Lewis*), Albert Lewis appealed his criminal conviction on grounds of judicial bias without having made an objection in the trial court on that ground. (*Id.* at p. 994.) The California Supreme Court rejected the argument, explaining that “the complaining party must seek disqualification at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. In doing so, the party must bring to the trial court’s attention ‘all of the facts’ later cited on appeal in support of the judicial bias claim. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111.) By failing to do so when the relevant events occurred, [the complaining party] has forfeited the right to complain about them on appeal. (*Ibid.*) For similar reasons, [the complaining party] has lost any additional claims that the trial court’s alleged bias affected subsequent rulings.” (*Lewis, supra*, 39 Cal.4th at p. 994.)

Here, the Codys assert that the judge against whom they filed a peremptory challenge – the Trinity County Superior Court presiding judge – failed to follow the requirement of Code of Civil Procedure section 170.8 that the Chair of the Judicial Council must be notified when the entire bench of a superior court has been recused. The Codys, however, did not object to any procedural irregularity. Consequently, the procedural irregularity – if any – was forfeited. (*Lewis, supra*, 39 Cal.4th at p. 994.)

So too, the Codys have not preserved a contention that Judge Murray – who assumed the case from the presiding judge – was actually biased against them. The Codys appeared before Judge Murray without objection. After Judge Murray denied their discovery motion, they asked for reconsideration on the merits. In other words, the Codys appealed without any timely objection on the grounds they now allege for the first time on appeal. In the absence of timely objection in the trial court, the issue has not been preserved for appeal. (*Lewis, supra*, 39 Cal.4th at p. 994; *In re S.C., supra*, 138 Cal.App.4th at p. 406.)

II

Denial of Leave to Amend

The Codys assert the trial court abused its discretion in denying them leave to amend their operative complaint (the third amended complaint). In support of their argument, the Codys do not include in their appellant’s appendix the trial court’s order denying them leave to amend their third amended complaint. Moreover, the Codys do not develop their argument to explain how the trial court’s denial constituted an abuse of discretion.

The respondent’s appendix on appeal shows the trial court stated the following reasons for denying the Codys’ leave to amend their third amended complaint:

“At the hearing on April 19, 2016, the Court also considered Plaintiffs’ Motion for Leave to Amend. Bank^[1] orally opposed the motion on procedural grounds, since the proposed pleading had not been filed together with the motion, as required by California Rules of Court, rule 3.1324(a). The Court allowed plaintiffs to file their ‘proposed Fourth Amended Complaint,’ and authorized Bank to file further opposition

¹ At the time of the ruling on the motion to amend the third amended complaint, the trial court had granted summary judgment in favor of Bank of America.

once counsel had a chance to read it. Bank duly filed its written opposition. The Court, having read the parties' papers and reviewed the file, concludes that the 'proposed Fourth Amended Complaint' comprises nothing more than a repeat of earlier generations of the complaint, and contains no new evidence that could not have been discovered prior to the motion for summary judgment. The latest of these pleadings did not survive the Bank's motion for summary judgment. Further, the 'new' allegation of conspiracy was included in previous versions of the complaint, but was dropped from the Third Amended Complaint, i.e., the version examined by the Court in the context of the summary judgment motion. When the plaintiff has been 'long aware of the facts on which the amendment was based, . . . it is patently unfair to permit the plaintiff to defeat the summary judgment motion by, in effect, allowing the plaintiff to present a "moving target," and not to be bound by the pleadings.' (Thompson Reuters, Cal. Judges. Benchbook, Civil Proceedings — Before Trial (2015 ed.) Update, p. 524; citing *Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280.) The plaintiff's conspiracy cause of action was abandoned in the Third Amended Complaint. It will not be revived absent a showing sufficient to warrant relief, which has not been offered. Accordingly, the motion to amend is denied."

In their briefing on appeal, the Codys do not develop any argument to explain why the trial court's reasoning might constitute an abuse of discretion. However, "[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16; *In re Marriage of Nichols* (1994) 27 Cal.App.4th 661, 672-673, fn. 3.) Thus, it is well settled that the "failure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (*Berger v. Godden* (1985) 163

Cal.App.3d 1113, 1119; *In re S.C.* (2006) 138 Cal.App.4th 396, 408.) Here, the Codys have forfeited their issue because they have not introduced a sufficient appellate record or demonstrated error in the trial court's denial of the motion to amend the operative complaint.

III

Single Point of Contact

The Codys contend the trial court erred in granting summary judgment on their claim that Nationstar did not provide them with a single point of contact as required by Civil Code section 2923.7. The contention is forfeited because (1) the Codys submitted an inadequate appellate record, and (2) their operative complaint is insufficient to plead a cause of action under Civil Code section 2923.7.

The Codys' third amended complaint alleges that "Nationstar Mortgage LLC failed to have a single point of contact person (spoc) to assist [them] in the modification process, but changed that person on a monthly basis." Later in the third amended complaint, the Codys clarified that Nationstar "failed, after January 1, 2013, to give [them] a Single Point of Contact (spoc) in violation of Calif. Civil Code 2923.7."²

Although the Codys included their third amended complaint in their appellants' appendix, they omitted any of the moving papers submitted by Nationstar in support of summary judgment and any papers filed in opposition. Their record is inadequate to review the merit of their claim on appeal. " 'Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' " (*Jameson v. Desta*

² Civil Code section 2923.7, subdivision (a), provides: "When a borrower requests a foreclosure prevention alternative, the mortgage servicer shall promptly establish a single point of contact and provide to the borrower one or more direct means of communication with the single point of contact."

(2018) 5 Cal.5th 594, 609, quoting *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

Even on the face of the third amended complaint, the Codys' claim based on Civil Code section 2923.7 cannot prevail. Nowhere in their operative complaint do they allege how the lack of a single point of contact might have adversely affected them. However, "a violation of [Civil Code] § 2923.7 is actionable only when that violation is material. A material violation is one where 'the alleged violation affected a plaintiff's loan obligations or the modification process.'" (*Shupe v. Nationstar Mortgage LLC* (E.D. Cal. 2017) 231 F.Supp.3d 597, 603, quoting *Cornejo v. Ocwen Loan Servicing, LLC* (E.D. Cal. 2015) 151 F.Supp.3d 1102, 1113.) Thus, the operative complaint was insufficient to establish a viable cause of action under Civil Code section 2923.7. (*Shupe*, at p. 603.)

IV

Trespass and Conversion

For their fourth argument, the Codys rely on the trial court's statement in its summary judgment ruling that Nationstar's entry into the real property "may have been a trespass or a conversion, but it is not a foreclosure." The Codys appear to use the trial court's statement to assert summary judgment should not have been granted. We are not persuaded.

Causes of action for trespass and conversion were not alleged in the Cody's operative complaint. And, in part II above, we have explained the Codys have not demonstrated error in the trial court's denial of leave to amend the operative complaint. The Codys cannot show it was error for the trial court to dismiss their complaint based on the strength of causes of action that were not actually alleged in that complaint.

V

Discovery Sanctions

In its entirety, the Codys’ final argument states: “The imposition of Discovery sanctions against [them] by the Hon. Judge Murray were an abuse of discretion resulting from a disregard of the pro per plaintiffs California statutory discovery rights.” The Codys have forfeited this issue because they do not identify the sanctions they challenge, develop any argument, or cite legal authority in support. (*City of Lincoln v. Barringer*, *supra*, 102 Cal.App.4th at p. 1239, fn. 16; *Berger v. Godden*, *supra*, 163 Cal.App.3d at p. 1119.)

DISPOSITION

The judgment is affirmed. Nationstar Mortgage LLC shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

_____/s/
HOCH, J.

We concur:

_____/s/
RAYE, P. J.

_____/s/
BLEASE, J.